

REMARKS

In the action of May 21, 2003, the Examiner rejected Claims 1-4 and 7-9 under 35 U.S.C. § 102 as anticipated by Marx et al., rejected Claims 1-4 and 7-9 under 35 U.S.C. § 102 as anticipated by Montanio and rejected Claims 1-9 under 35 U.S.C. § 103 as unpatentable over Lundell et al., in view of Marx et al.

As indicated in the specification, applicant's invention is a trial power toothbrush which is designed to provide a potential customer a trial period of use to permit the customer an opportunity to experience the full and accurate effect of the power toothbrush so as to be able to make an informed decision as to purchase. This is important for these products, since power toothbrushes are expensive, and potential customers are traditionally not inclined to spend significantly greater sums on a toothbrush than in the past unless they have experienced and recognize the beneficial effects first hand.

Applicants have used the word "trial" to define a short period of use of the device. A "trial period", a well-known and recognized term, meaning a short experimental testing period, is clearly distinguished by accepted definition, from a normal period of use. As set forth in the specification and the claims, the period of use is just sufficient for the user to become accommodated to the operation of the power toothbrush and to evaluate the performance thereof, but substantially less than a normal period of use.

In the action, the Examiner has not indicated that any of the references are trial toothbrushes, nor in fact is there any basis for such an assertion. All of those toothbrushes are typical commercial toothbrushes, which have a ordinary expected lifetime.

Marx, for instance, teaches that the non-rechargeable battery is good for six months. Presumably the battery can be replaced. Marx does not teach a concept of a "trial use" device. The Examiner asserts that the term "trial" defines no structure; however, this is incorrect. The term "trial" refers to a short period of use, i.e. a period of operation of the device, determined and controlled by elements in the device. This all relates to structure.

Applicant has amended the claims to include a limitation to a means for preventing further operation of the toothbrush at the end of the trial period. Power toothbrushes are well known to have an extended lifetime of several years, based on either recharging a battery or placing new batteries into the unit or obtaining power from a wall socket. Otherwise, no one would purchase a power toothbrush. In applicant's invention, the operation of the toothbrush is terminated at a time which is substantially less than the normal life of a power toothbrush. The "means for preventing further operation" at a specific time, which is substantially less than a normal life of such an instrument, is structural and therefore must be treated as a structural limitation. None of the references teach or suggest such a limitation.

Claims 1 and 7 have been further amended to recite a very specific time, in particular sixty brushings/uses, of operation. Following that time, further operation of the article is prevented. Such a short time of enabled use, however, is still sufficient to permit an appropriate evaluation of the article relative to potential purpose. There is no suggestion that any of the references are limited to such a short trial period of time.

Accordingly, independent Claims 1 and 7 and the claims dependent thereon are patentable over the references and thus should be allowed.


Newly added Claim 13 is similar to previously presented Claim 1 but includes the limitation of the "preventing operation" means. Claim 13 is patentable over the references for the reasons provided above excepting the remarks concerning the limitation involving sixty brushings/uses. Again, the normal lifetime of power toothbrushes extend for years because of the cost thereof. The present invention emulates the effect of a power toothbrush but is only capable of operating for a very limited period of time but still sufficient to permit the user to evaluate the toothbrush. Accordingly, Claim 13 is also patentable over the references.

In view of the above, Claims 1-9 and 13-14 are in condition for allowance and such action on the part of the Examiner is respectfully requested.

This is to request a 3 month extension of time. Enclosed is our check for \$930.

The Commissioner is authorized to charge any deficiency or credit any over payment to Deposit Account 17-0900.

Respectfully submitted,  
JENSEN & PUNTIGAM, P.S.

By   
Clark A. Puntigam, #25,763  
Attorney for Applicant

CAP:llh  
206 448-3200

Enclosures: Postcard, Amendment, Check